

\*\*\*

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT  
CHANDIGARH**

**Civil Revision No. 963 of 2004**

Date of decision: 1.10.2007

**Smt. Mansi Devi and another**

**...Petitioners**

**Versus**

**Sar Chand (died) through L. Rs.**

**...Respondent**

**CORAM: HON'BLE MR.JUSTICE RAJESH BINDAL**

Present: Mr. Sunil Chadha, Advocate for the petitioners.

Mr. Jaspal Singh, Advocate for the respondent.

\*\*\*\*

**RAJESH BINDAL, J.**

This is tenants' revision petition against the concurrent findings of fact by both the Courts below whereby their eviction had been ordered on the ground of personal necessity as well as building having become unfit and unsafe for human habitation.

2. At the time of issuing of notice of motion, primary contention raised by learned counsel for the petitioners was that application for additional evidence, which was filed before the Appellate Authority, having not been considered before passing the order in appeal, the impugned order deserves to be set aside and matter should be remitted back. He submitted that additional evidence was sought to be produced to prove the fact that the another premises owned by respondent/landlord was vacated by tenant, which fact was not mentioned by the respondent/landlord. As per document placed on record, the same consisted of one room and one kitchen. Still further he submitted that during the pendency of the proceedings, the landlord having died, personal necessity has been eclipsed. He further submitted that there are no averments in the pleadings of the respondent/landlord as to how much area is in his possession. As regards the building having become unfit and unsafe is concerned, it was submitted that the findings recorded by the Court below on that issue are perverse.

\*\*\*

3. On the other hand, learned counsel for the respondent/landlord submitted that even if the landlord has died, the need of his wife and other family members subsists. The claim made by the respondent/landlord was that because of his old age, he is not able to live upstairs. Accordingly, he needs the premises on the ground floor. The same is the position with the widow of deceased landlord. He submitted that the crux of the application for additional evidence filed by the petitioners was duly considered while upholding the order passed by the Rent Controller. As regards building having become unfit and unsafe, his contention is that there is a report of expert produced by the respondent/landlord, which clearly proved that building is about 70-80 years old. The wooden ballas at certain places have been infected by termite. Factum of the building having been constructed by mud and mortar has not even been denied by the expert produced by the petitioners/tenants. Still further two notices Ex. P-3 and Ex. P-5 have also been produced on record to show that even Municipal Committee had also insisted that building need urgent repair on account of its being unsafe.

4. Having heard learned counsel for the parties, I am of the view that as far as the application filed by the petitioners/tenants for additional evidence is concerned, the decision/non-decision thereof will not have any bearing on the view, I am taking in the present case. The eviction initially was sought by the respondent/landlord on the ground of personal necessity. However, during the pendency of the petition, additional issue with regard to building having become unfit and unsafe for human habitation was also framed. From the evidence on record in the form of expert produced by respondent/landlord, it is abundantly clear that building had become unfit and unsafe for human habitation. This is further fortified from two notices ( Ex. P-3 and Ex. P-5) issued by the Municipal Committee. This fact is further buttressed with the admission made by the petitioners/tenants in their cross examination that projection of the roof on the ground floor could fall at any time, which meant that same was not in good shape. The projection is necessarily connected with the roof on the rooms in the possession of petitioners/tenants. Even the building expert RW-3 produced by the petitioners/tenants admitted that the bricks of the building had been

**\*\*\***

laid with the mud and mortar. He further admitted that building can be categorised as 'C' class. On a question as to whether the building could be 100 years old, the reply was evaded. With this evidence on record of the experts, which could not be faulted with even by expert witness produced by the petitioners/tenants and the admission of the petitioners/tenants themselves to state that the projection of the roof on the ground floor could fall at any time, further considering notices issued by Municipal Committee, it is clearly evident that the building had become unfit and unsafe for human habitation. Once it is so, in my opinion, I need not dilate on the other issues raised by the parties as eviction on this single ground is enough to non suit the petitioners/tenants.

5. Accordingly, concurring with the findings recorded by the Court below on this issue, the present revision petition is dismissed.

**October 01, 2007**  
**Pka**

**(Rajesh Bindal)**  
**Judge**